

BUYING A BUSINESS

Some of the issues that need to be considered when you are buying a business are discussed below.

Share Purchase or Asset Purchase?

There are two ways of buying a business. The first is to buy the shares in the company which owns the business. The second is to buy the assets of the business. These include the plant, equipment and the goodwill.

As buying shares in a company can also mean acquiring that company's debts and liabilities, the second method is the most commonly used in the purchase of a business. By acquiring the assets, you have the freedom to incorporate your own company to become the owner of the business, thereby enabling you to start with a "clean slate".

Due Diligence

"Due Diligence" describes the process of investigating the business to confirm whether the vendor has given you correct information regarding the business. The vendor should provide access to the company's books and accounting records. You should then undertake an investigation (preferably with your accountant) to satisfy yourself that the company is profitable and that any projections as to earnings which may have been provided by the vendor are realistic and achievable.

The due diligence process can be carried out either before or after an agreement for sale and purchase is signed. Where it is carried out after an agreement has been signed, the agreement will need to include a "due diligence" clause which provides, amongst other things, that if the outcome of your investigation is unsatisfactory, for whatever reason, then you can cancel the agreement.

Warranties

"Warranties" are representations made by the vendor about the business. The sale and purchase agreement will include standard warranties but if the vendor has made specific representations about the business that have played a major part in your decision to buy it, then the agreement should specifically record these. It is vital to communicate such matters to us so we can ensure any such representations are included in the agreement.

Lease

If the business is being operated on leased premises, then the lease will need to be transferred to you or your company. This is known as an "assignment of lease". As part of your due diligence investigation, you should check the terms of the lease carefully to ensure they are acceptable. In particular, beware of a lease that only has a short term to run and has no right of renewal. You may find the landlord has other plans for the building and you could be faced with unanticipated expensive relocation costs.

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The above is an outline only of some of the issues that arise when purchasing a business. You should seek legal advice in relation to those issues which are particularly relevant to your transaction.

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